

Department of Legislative Services
 Maryland General Assembly
 2020 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 16 (Senator Reilly)
 Education, Health, and Environmental Affairs
 and Budget and Taxation

Business Occupations and Professions - Master Electricians Guaranty Fund - Establishment

This bill requires the State Board of Master Electricians to establish and administer a guaranty fund, subject to specified requirements. The board must maintain a balance of at least \$250,000 in the guaranty fund, paid for by fees assessed on licensees – \$100 at issuance of a license and an additional \$50 at any time there is an insufficient fund balance. Awards are limited to \$20,000 for a single claimant and are generally limited to \$100,000 for all claimants for acts or omissions of a single licensee. The bill also establishes administrative hearing procedures for the board’s adjudication of claims made against the fund and specifies procedures for collecting reimbursements from licensees for which claims were paid.

Fiscal Summary

State Effect: Special fund expenditures increase by \$114,700 in FY 2021. Future years reflect annualization and the elimination of one-time costs. Special fund revenues are not directly affected. Nonbudgeted revenues increase by at least \$472,500 in FY 2021 and by at least \$270,000 annually thereafter. Nonbudgeted expenditures increase by an unknown amount, as discussed below.

(in dollars)	FY 2021	FY 2022	FY 2023	FY 2024	FY 2025
NonBud Rev.	\$472,500	\$270,000	\$270,000	\$270,000	\$270,000
SF Expenditure	\$114,700	\$130,600	\$134,200	\$138,700	\$143,400
NonBud Exp.	-	-	-	-	-
Net Effect	(-)	(-)	(-)	(-)	(-)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Assessment of Fees – Required Minimum Guaranty Fund Balance

Before the State Board of Master Electricians issues a license, the applicant must pay a fee of \$100 to be credited to the Master Electricians Guaranty Fund. If the board finds that, because of pending claims, the amount of the fund may fall below \$250,000, the board must assess each licensee a fee of \$50. The board may not assess a licensee more than \$150 in a calendar year. If a licensee fails to pay an assessment within 60 days after notice of the assessment, the license must be suspended until the assessment is paid.

Claims Against the Guaranty Fund – Generally

Subject to the administrative provisions established under the bill, described below, a claimant may recover compensation from the fund for an actual loss that results from an act or omission by a licensee as found by the board or a court of competent jurisdiction. “Actual loss” means the costs of restoration, repair, replacement, or completion that arise from unworkmanlike, inadequate, or incomplete electrical services. However, a claimant must comply with a written agreement to submit a dispute to arbitration before seeking recovery from the fund. The board may deny a claim if the board finds that the claimant unreasonably rejected good-faith efforts by the licensee to resolve the claim.

The board may *not* award from the fund:

- more than \$20,000 to one claimant for acts or omissions of one licensee;
- more than \$100,000 to all claimants for acts or omissions of one licensee unless, after the board has paid \$100,000 based on acts or omissions of the licensee, the licensee reimburses \$100,000 to the fund;
- an amount for attorney’s fees, consequential damages, court costs, interest, personal injury damages, or punitive damages;
- an amount as a result of a default judgment in court; or
- an amount in excess of the amount paid by or on behalf of the claimant to the licensee against whom the claim is filed.

A claim against the fund based on the act or omission of a particular licensee may not be made by specified individuals with close connections to the licensee. A claim must be brought against the fund within three years after the claimant discovered or, by use of ordinary diligence, should have discovered the loss or damage.

The board may order payment of a claim against the fund only if:

- the decision or order of the board is final in accordance with current law and all rights of appeal are exhausted; or
- the claimant provides the board with a certified copy of a final judgment of a court of competent jurisdiction or a final award in arbitration, with all rights of appeal exhausted, in which the court or arbitrator expressly has found on the merits that the claimant is entitled to recover funds under the bill and has found the value of the actual loss.

The board must pay approved claims in the order submitted; other requirements are established for unreimbursed claims against a single licensee that exceed \$100,000 and for when there is not sufficient money in the fund to pay an approved claim.

Administration and Investigation of Claims

The bill specifies the process to begin a proceeding to recover a fund, which starts with a claimant submitting a claim to the board, under oath, that states relevant information about and evidence supporting the claim. Existing administrative procedures for notice, hearings, and judicial review that apply to board proceedings also apply to proceedings to recover from the fund. On receipt of a claim, the board must send a copy of the claim to the licensee alleged to be responsible for the actual loss and require a written response to the claim within 10 days.

The board *must* review the claim and any response to it and *may* investigate the claim. On the basis of its review and any investigation, the board may (1) hold a hearing, at which the claimant has the burden of proof; (2) dismiss the claim if it is frivolous, legally insufficient, or made in bad faith; or (3) issue a proposed order to pay all or part of the claim or deny the claim if the total claim against a particular licensee is no more than \$7,500, subject to specified notification and other requirements.

The bill also establishes requirements for when there is a related disciplinary proceeding. A claimant may not concurrently submit a claim against the guaranty fund and bring an action in court against a licensee based on the same facts alleged in the claim.

Reimbursement of Guaranty Fund Payments

The board has a right to reimbursement of the fund by the licensee that the board finds responsible for the act or omission giving rise to the claim for the amount paid from the fund, plus interest of at least 10% annually. Additional administrative procedures and requirements are specified in the event of nonpayment after 60 days, including seeking a court judgement and referral to the Central Collection Unit.

Generally, if the board pays a claim against the fund based on an act or omission of a licensee, the board may suspend the license until the licensee reimburses the fund in full for the amount paid from the fund, plus interest. However, the board may not suspend the license if the board finds that the licensee did not know of the wrongful conduct or could not prevent the violation. Regardless, reimbursement of the fund in full by a licensee, by itself, does not nullify or modify the effect of a disciplinary proceeding against a licensee.

Bill Does Not Affect Other Authorities and Remedies

The bill does not (1) limit the authority of the board to take disciplinary action against a licensee under current law; (2) limit the availability of other remedies to a claimant; or (3) require a claimant to exhaust administrative remedies before the board before bringing an action in court.

Current Law: The State Board of Master Electricians in the Maryland Department of Labor (MDL) issues master electrician licenses to qualified individuals under the Maryland Master Electricians Act. Each county is required to adopt licensing qualifications comparable to or more stringent than specified State qualifications or require a State license and enforce compliance with State licensing requirements. In a local jurisdiction that requires a local license, the State license does not authorize the provision of electrical services but serves only as a reciprocal mechanism for obtaining licenses in each local jurisdiction. In the two jurisdictions that do not have local licensing requirements, an electrician must have a State license to provide electrical services as a master electrician.

To obtain a State license as a master electrician, the applicant must have seven years of experience providing electrical services for all types of electrical equipment and apparatus, under the supervision of a master electrician or a similarly qualified employee of a governmental unit. The State board does not issue journeyman or apprentice electrician licenses. The board is authorized to establish fees by regulation. The initial fee is \$20 and the renewal fee is \$25.

Background:

Guaranty Funds

No State guaranty fund for master electricians exists; however, similar State guaranty funds are administered by regulatory bodies in MDL: the Real Estate Guaranty Fund and the Home Improvement Guaranty Fund. The Real Estate Guaranty Fund's fiscal 2019 ending balance was \$1.1 million; total claims paid in that year were \$180,000, and the per claim cap is \$50,000. The Home Improvement Guaranty Fund's fiscal 2019 ending balance was \$3.4 million; total claims paid in that year were \$919,000, and the per claim cap is \$20,000. For both funds, most claims were significantly less than the caps. Guaranty fund assessments are paid at the initial license issuance as well as each renewal.

Local Licensing and Regulation of Electricians

The State board shares licensing authority with local jurisdictions, all but two of which, Allegany and Garrett counties, have a licensing program for master electricians. The State board licenses approximately 5,400 master electricians; it is estimated that about 2,000 master electricians have only a local license because they work in just one jurisdiction and, therefore, have no need for a State license. Statute requires local jurisdictions to enforce licensing requirements. The local policing of the electrical profession primarily occurs through locally issued permits and locally conducted inspections. Every jurisdiction in Maryland has a building permit office that is generally separate from the local licensing board.

State Fiscal Effect:

Administrative Costs

Currently, nearly all complaints received by the State board are forwarded to local licensing boards, except for those from Allegany and Garrett counties, which do not have local boards. Under the bill, the board is responsible for adjudicating and potentially investigating a significant number of additional complaints. Based on its experience with other guaranty funds, MDL advises that it requires additional staff to administer the guaranty fund and handle related responsibilities. The guaranty fund assessment, discussed below, is for the payment of claims, and thus cannot be used to cover MDL's administrative costs.

Therefore, special fund expenditures for the State Occupational Mechanical Licensing Boards' Fund increase by \$114,678 in fiscal 2021, which accounts for the bill's October 1, 2020 effective date. This estimate reflects the cost of hiring one *full-time* administrative staff and one *half-time* assistant attorney general to administer the guaranty

fund and handle related responsibilities, including adjudication of claims against the fund. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.5
Salaries and Fringe Benefits	\$96,745
Operating Expenses	<u>17,933</u>
Total FY 2021 State Expenditures	\$114,678

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses.

If the board elects to use the Office of Administrative Hearings (OAH) for contested claims or payment recovery cases, special fund expenditures for the board and reimbursable fund revenues for OAH may further increase to cover the cost of the hearings. As the bill does not require the board to use OAH, these potential revenues and expenditures are not reflected in this analysis.

Special fund revenues are not directly affected, although MDL advises that current license revenue is insufficient to cover the additional costs required by the bill, which may necessitate raising licensing fees.

Guaranty Fund

The State Board of Master Electricians licenses approximately 5,400 individuals in total; accounting for new licensees and retirements, total licensing activity is essentially flat and split evenly over the two-year revenue cycle.

To ensure that the initial guaranty fund balance is more than \$250,000, as required under the bill, MDL must assess each licensee an initial fee of \$50 in fiscal 2021. Subsequent to that initial assessment, each licensee must also pay the \$100 fee at each license issuance – initial and renewal. Therefore, accounting for the bill’s October 1, 2020 effective date, nonbudgeted revenues for MDL increase by \$472,500 in fiscal 2021 and by about \$270,000 annually thereafter from guaranty fund assessments. Assessment revenue may fluctuate minimally based on licensure activity.

Nonbudgeted expenditures increase, likely beginning in fiscal 2021, as the fund pays out awards for valid claims. The amount and timing of the expenditures cannot be reliably estimated at this time. Nonbudgeted revenues increase up to the amount paid out for valid claims, as the licensees responsible for the claim are required to repay the fund, plus interest (although some licensees ultimately will not, for a variety of reasons).

Small Business Effect: Many master electricians own and operate small businesses and must pay the initial and ongoing guaranty fund assessments under the bill. The initial fee is \$20 and the renewal fee is \$25. Absent the initial assessment, the bill adds at least an additional \$100 to the total cost of licensure every two years – potentially up to \$150 per year. As noted above, generally, electricians must have licenses issued in each local jurisdiction to provide electrical services in that jurisdiction. Some licensees carry as many as 22 different licenses in order to be able to work statewide. Master electricians that do not hold a State license (*i.e.*, only hold a local license) are not affected by the bill.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Maryland Department of Labor; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Office of Administrative Hearings; Department of Legislative Services

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mm/mcr

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510